

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6920

BILL NUMBER: HB 1075

DATE PREPARED: Dec 21, 2001

BILL AMENDED:

SUBJECT: Small short term consumer loans.

FISCAL ANALYST: Chris Baker

PHONE NUMBER: 232-9851

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill regulates certain small, short term loans under the Uniform Consumer Credit Code.

Effective Date: Upon passage.

Explanation of State Expenditures: The Department of Financial Institutions (DFI) would have additional administrative expenditures for the following: additional written opinions, providing written notification of the standards for renewing a small loan (the bill defines a small loan as a payday loan not less than \$50 and not greater than \$401), and printing of transcripts if the DAI sues to enjoin a payday lender. Rates for certified mail are as follows: \$2.10 for certification and \$0.34 for first class postage. If mail weighs more than an ounce, \$0.23 is charged for each additional ounce.

Criminal Penalties for Fraud: A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,131 in FY 2000. Individual facility expenditures ranged from \$16,442 to \$40,312. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: The bill allows several civil penalties to be imposed by the DAI for violations as described in the bill. Depending on the circumstances and current law, the penalties can range from not more than \$500, not more than \$1,000, to not more than \$15,000. Payday lenders are considered licensed lenders for purpose of regulation. In FY 2001, the DAI collected \$490,584 in licensed lender fees.

In FY 2000 \$513,421 in licensed lender fees were collected. Licensed lender fees are deposited in the Financial Institutions Fund.

Background: The Department reports there are currently 105 payday lenders with approximately 560 branches in operation in Indiana.

The bill requires a person engaged in making small loans to post a bond with the DAI of \$50,000 per location in the business of making small loans. The maximum bond cannot exceed \$500,000 per lender. Proceeds of any bonds that are cashed in case of a violation would be used to pay damages and penalties to a consumer harmed as a result of the violation. Payday lenders would be required to continue to post the bond for a period of five years after the lender ceased operation in Indiana.

Criminal Penalties for Fraud: Under the bill, there are several criminal violations for fraud involving small loans only when a check is used to defraud another person. Current law provides for a Class A misdemeanor, a Class C or D felony depending on the severity of the violation as defined in statute. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C felony and a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Fees for Civil Actions: This bill may increase the filings of civil actions. The filing fee for civil actions is \$100. Of this fee, 70%, or \$70, is deposited in the State General Fund if the case is filed in a trial court. If a case is filed in a city or town court (providing that the court has jurisdiction), the State General Fund receives 55% of the \$100 filing fee.

There were 78,515 civil plenary cases filed in 2000 in courts of record statewide. Civil plenary cases are defined as those founded in contract, actions dealing with real and personal property, as well as actions seeking equitable or injunctive relief.

Explanation of Local Expenditures: *Criminal Penalties for Fraud:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Criminal Penalties for Fraud:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

Class A misdemeanor: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If

the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

Fees for Civil Actions: If a case is filed in a trial court, the county general fund receives 27%, or \$27, of the \$100 filing fee. The 3% or \$3 is deposited in the general fund of the cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a circuit, superior, county, or municipal court located in the county. If the case is filed in a city or town court (providing the court has jurisdiction), the county general fund receives 20% while the city or town general fund receives 25%.

State Agencies Affected: Department of Financial Institutions; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement

Information Sources: Mark Tarp, Department of Financial Institutions, (317) 232-3961; U.S. Postal Service; *Indiana Handbook of Taxes, Revenues, and Appropriations FY 2000*; 2000 *Indiana Judicial Report*, Vol. I, p.57; Office of the State Auditor *Revenue Trial Balance, June 30, 2001*; Indiana Sheriffs Association; Department of Correction.